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BEFORE THE
Federal Communications Commission
WASHINGTON, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Rules and Policies on Foreign Participation)
in the U.S. Telecommunications Market)

IB Docket No. 97-142

To: The Commission

COMMENTS OF U S WEST, INC.

U S WEST, INC.

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U S WEST, Inc. ("U S WEST") hereby submits comments in response to the Commission's *Notice of Proposed Rulemaking* issued in the captioned proceeding.¹ The *Notice* initiates a review of the current rules governing the entry of foreign-affiliated carriers into the U.S. market for basic telecommunications services in light of the World Trade Organization agreement on basic telecommunications services ("Agreement").²

I. SUMMARY

U S WEST believes that open entry to all telecommunications markets must serve as a cornerstone for the development of competitive global markets. Therefore, in light of the hurdles it has faced in gaining access to foreign markets, U S WEST urges the Commission to make every effort to promote open markets both in the United States and abroad by encouraging foreign nations to comply with the Agreement and the framework for competition in basic telecommunications services set forth in the Reference Paper on Pro-Competitive Regulatory Principles ("Reference Paper"). In this regard, U S WEST believes the Commission can serve as a model by adopting, in compliance with the Agreement and Reference Paper, broad open entry

¹ Rules and Policies on Foreign Participation in the U.S. Telecommunications Market, *Order and Notice of Proposed Rulemaking*, IB Docket No. 97-142, FCC 97-195 (rel. June 4, 1997) ("*Notice*").

² The Agreement was concluded on February 15, 1997, and is to take effect on January 1, 1998.

policies as well as regulatory safeguards that effectively curb anti-competitive conduct without subjecting carriers to undue administrative burdens. In addition, the Commission will have opportunities to affirmatively encourage other nations to open their markets in compliance with the Agreement and Reference Paper. For example, until the Agreement becomes effective, the Commission should continue to utilize its effective competitive opportunities ("ECO")³ test for both international Section 214 authorizations and Title III licenses.

II. BACKGROUND

U S WEST's interest in the outcome of this proceeding stems from its experience in attempting to gain entry into foreign telecommunications markets. U S WEST's efforts in this regard have been focused on establishing or maintaining an investment in facilities-based competitive local service providers.

U S WEST, through U S WEST International, is investing in local telecommunications infrastructure by building cable TV, telephony, and wireless communications networks in many markets worldwide.⁴ Specifically, U S WEST International is involved in cable TV and telephony ventures in the United Kingdom, Japan, The Netherlands, Belgium, Czech Republic, Malaysia, and Indonesia. These international ventures provide U S WEST International access to more than 15 million households outside of the U.S. With the completion of its merger with

³ The Commission currently applies the ECO test as a part of its overall public interest analysis for both international Section 214 authorizations and Title III licenses. The ECO test focusses on the actual conditions of entry for U.S. carriers in the foreign destination market.

⁴ U S WEST International is a part of U S WEST Media Group, a division of U S WEST. U S WEST International is responsible for developing and managing U S WEST Media Group's commercial activities in high growth markets outside North America.

Media One (formerly known as Continental Cablevision), U S WEST International gained access to several million additional households through cable TV ventures in Singapore and Argentina.

U S WEST International is also involved in wireless ventures in the United Kingdom, Poland, Hungary, Czech Republic, Slovakia, Russia, Malaysia and India. Indeed, with its partners, U S WEST International launched: (1) the first analogue cellular radio systems in Russia, Hungary, Czech Republic and Slovakia; (2) the first digital GSM cellular services in Malaysia, Poland, and Czech Republic; and (3) the first high-capacity digital personal communications network in the United Kingdom.

While these international ventures have been successful, U S WEST's involvement in international markets frequently has been impeded by substantial legal barriers to entry imposed by many of the major trading nations. Many of the hurdles U S WEST International has encountered were similar to restrictions imposed on foreign entry into the U.S. telecommunications markets. U S WEST believes, however, that the hurdles arose because of or were exacerbated by the lack of an independent regulatory authority in many of the countries.

U S WEST is hopeful that implementation of the Agreement and the Reference Paper will ameliorate many of the difficulties it has faced in entering foreign markets. By virtue of the Agreement, 69 of the 129 WTO member nations have agreed to permit competition from foreign suppliers of basic telecommunications services.⁵ In addition, 65 of those nations have agreed to rules of competition for basic telecommunications services set forth in the Reference Paper.⁶ The Reference Paper provides substantive guidelines covering interconnection of competing telecommunications service providers, competition safeguards, and transparent and

⁵ Notice at ¶ 2.

⁶ *Id.*

independent regulation of telecommunications services. Thus, the Agreement, in conjunction with the near-universal acceptance of the Reference Paper, is strong evidence of the widespread acceptance among WTO member nations of two important principles:

- Competition in the provision of telecommunications services is the most efficient mechanism for nations to promote and benefit from innovation in communications technologies; and
- Competition can only serve this role where there is a commitment among the market nations to the principle of fair and open competition.

Simply put, the Agreement and Reference Paper evidence a commitment among WTO member nations to establish an open competitive global telecommunications market supported by open pro-competition regulatory structures.

III. THE COMMISSION SHOULD PROMOTE OPEN MARKETS FOR FOREIGN AND DOMESTIC CARRIERS.

The *Notice* initiates a review of the current rules governing entry of foreign-affiliated telecommunications carriers into the U.S. market in order to bring these rules into compliance with the Agreement and Reference Paper. The stated goals of the Commission are to: (1) promote effective competition in the U.S. market for international telecommunications services; (2) “prevent anti-competitive conduct in the provision of international services or facilities;” and (3) “encourage foreign governments to open their telecommunications markets.”⁷ To that end, the Commission proposes open entry policies for foreign-affiliated carriers coupled with regulatory measures for detecting and deterring anti-competitive behavior.

U S WEST agrees in principle with the Commission’s proposal to adopt open entry policies for the U.S. telecommunications market. U S WEST also agrees in principle that regulatory safeguards to prevent anti-competitive conduct are essential to promoting fair and

⁷ *Id.* at ¶¶ 25-27.

effective competition, provided that such safeguards are not unduly burdensome. Most important, however, U S WEST believes it is essential that the Commission encourage foreign nations to open their telecommunications markets to investment from the U.S. if the full benefits of the Agreement and Reference Paper are to be realized. As the Commission recognized:

If there is no opportunity for U.S. participation in competitive markets abroad, the benefits of providing international service on an end-to-end basis will flow solely to a dominant foreign carrier and its U.S. affiliate rather than to all competitors on this route.⁸

Given the importance of this issue, U S WEST urges the Commission to use every mechanism at its disposal to encourage foreign governments to open their telecommunications markets. For example, the Commission can serve as a model to nations by adopting broad open entry policies as well as regulatory safeguards that effectively curb anti-competitive conduct without subjecting carriers to undue administrative burdens. Rapid implementation of such policies and rules in the U.S. will strongly encourage other governments to follow suit. As the Commission recognizes, the incentive of being allowed to participate in the U.S. market will encourage other nations to lift barriers to U.S. investment.⁹

In addition, the Commission can utilize its existing regulatory authority proactively to encourage other nations to open their markets in compliance with the Agreement. For example, until the Agreement becomes effective in January 1998, the Commission should continue to apply its ECO test for both international Section 214 authorizations and Title III licenses. The Commission should also, where appropriate, exercise its authority to consider

⁸ *Id.* at ¶ 27.

⁹ *Id.* at ¶ 77.

trade concerns, among other issues, as part of its public interest review of license applications under Section 310(b)(4) even after the Agreement becomes effective.

In short, U S WEST supports the open entry, minimal regulation framework for a competitive global telecommunications market set forth in the Agreement and the Reference Paper. To that end, U S WEST urges the Commission to take every effort to assure not only that the U.S. is in compliance with the Agreement and Reference Paper, but also to encourage foreign nations to comply with the open entry, minimal regulation framework agreed to in those documents.

IV. THE COMMISSION SHOULD PERMIT INDIRECT FOREIGN OWNERSHIP UP TO 100 PERCENT.

Of particular significance for open entry to the U.S. market is the Commission's proposal under Section 310(b)(4) of the Communications Act to permit indirect foreign ownership of common carrier radio licenses up to 100 percent without undertaking an ECO analysis in instances where the foreign investor is from a WTO member nation.¹⁰ By taking such action, the Commission would establish a strong presumption that an application should not be denied solely because of indirect foreign ownership by an entity from a WTO member nation.¹¹ Adoption of this proposal will also speed foreign investment into U.S. markets and relieve applicants and the Commission of unnecessary regulatory burdens. Further, such action would

¹⁰ Section 310(b)(4) of the Communications Act permits the Commission to deny or revoke common carrier, broadcast, or aeronautical radio licenses if more than 25 percent of the applicant or licensee is indirectly owned *and* denial or revocation would serve the public interest. Conversely, however, the Commission permits indirect foreign ownership to exceed 25 percent, up to and including 100 percent, if such ownership would serve the public interest. 47 U.S.C. § 310(b)(4); *see also Notice* ¶ 67 and n.59-n.60. The Commission currently applies the ECO analysis in undertaking the public interest analysis under Section 310(b)(4). *Id.*

¹¹ *Cf. Notice* at ¶ 73.

not amount to an abandonment of the Commission's important regulatory oversight role because the Commission would still consider public interest factors such as national security, law enforcement, foreign policy, or trade concerns, in determining whether to grant a license under Section 310(b)(4) of the Communications Act.

U S WEST therefore supports the Commission's proposal to adopt open entry policies for the U.S. market and to permit indirect foreign ownership of common carrier radio licenses up to 100 percent without an ECO analysis where the foreign investor is from a WTO member nation. As the Commission recognizes, however, lowering legal entry barriers to new foreign or domestic investors alone is inadequate to develop a competitive global telecommunications market. As discussed below, the Commission must also establish nondiscriminatory regulatory structures that effectively guard against anti-competitive conduct while not subjecting carriers to undue administrative burdens.

V. REGULATORY SAFEGUARDS SHOULD BE EFFECTIVE AND NOT UNDULY BURDENSOME.

The Reference Paper obligates nations adopting it to "maintain measures to prevent anti-competitive conduct, to ensure fair, nondiscriminatory and cost-oriented interconnection, and to administer universal service obligations in a competitively neutral manner."¹² In implementing this requirement, the Commission provides assurance that its regulatory safeguards will be crafted to prevent anti-competitive conduct while being no more burdensome than necessary.

We have attempted in recent proceedings to focus our regulatory safeguards on our primary goal of promoting effective competition and on the

¹² *Id.* at ¶ 9.

necessary corollary of preventing anticompetitive conduct in the provision of U.S. international services and facilities.¹³

In order to accomplish this goal, the Commission relies on the statutory and regulatory framework underlying the 1996 Act.¹⁴

U S WEST supports the Commission's goal of establishing regulations that are effective and not unduly burdensome and believes that reliance upon the policy framework of the Agreement and Reference Paper is a reasonable basis for achieving this goal. In addition, U S WEST submits that any rules adopted in this proceeding must be concise, and no more burdensome than necessary. The rules must provide clear standards and guidelines which enable carriers to establish quickly and accurately what international transactions, services, and practices are permissible. In the absence of clear parameters, carriers will be forced to seek Commission authorization or clarification for each new service or transaction. Such a result would have a profound chilling effect on efforts to attract foreign capital.

In addition, U S WEST notes that the Commission believes that the principles set forth in the Reference Paper are "essentially the same as the requirements of the Communications Act and the Telecommunications Act of 1996 that this Commission has implemented over the past 16 months."¹⁵ U S WEST cautions, however, that the 1996 Act is *not* the only regulatory model that will satisfy the open entry and pro-competition requirements of the Agreement and the Reference Paper. The 65 nations that have agreed to be bound by the Reference Paper have not agreed to adopt whole cloth FCC telecommunications policy. Instead,

¹³ *Id.* at ¶ 78.

¹⁴ *Id.* at ¶ 9.

¹⁵ *Id.* at ¶ 24.

the nations are committed to creating an open regime to encourage the international flow of investment, and to create a regulatory environment which will treat all players fairly and prevent the abuse of dominance. The ultimate test of compliance with the Agreement and Reference Paper will be the substance, not the form, of a nation's telecommunications rules and policies.

A brief comparison of the telecommunications policies of the United Kingdom and the United States is illustrative in this context. After the break-up of AT&T, U.S. regulatory policy focussed upon a system in which both call origination and call termination were treated as essential facilities. Call origination charges were steadily reduced to discourage long distance carriers from "bypassing" the local operator. As a consequence of these policies, combined with state barriers to entry and other legal hurdles, there is little facilities-based competition for basic local service today.

In contrast, the United Kingdom has actively pursued regulatory policies that encourage the development of alternative facilities-based competition. Since 1990, the regulatory authorities pursued a regulatory scheme marked by rate re-balancing, encouraging cable operators to offer telephone service, issuing licenses for cellular, PCN and fixed wireless loops, and stimulating foreign investment. As a consequence, there is a dynamic market in local services in that country. It is evident, then, that the framework of the 1996 Act is not the only blueprint for developing competitive markets for the provision of basic telephone service.

VI. THE COMMISSION SHOULD NOT ESTABLISH STRUCTURAL SEPARATION REQUIREMENTS.

The Commission seeks comment on whether it should require some degree of structural separation between the U.S. carrier and its affiliated foreign carrier as an additional safeguard. U S WEST does not believe that the imposition of any new structural separation

requirements in this context is warranted. U S WEST submits that accounting safeguards alone will be sufficient to protect against any concerns that may arise from foreign participation in the U.S. market.

Structural separation can be an onerous requirement¹⁶ and should be imposed only if there are clearly articulated anti-competitive concerns which cannot be resolved with the adoption of less intrusive regulatory mechanisms. In the absence of such a showing, structural separation would be nothing more than regulation for the sake of regulation, and would fly in the face of the Commission's assurances that the regulatory safeguards in this proceeding are intended to prevent anti-competitive conduct while being no more burdensome than necessary.¹⁷

Other than the vague suggestion that structural separation may be useful in preventing and detecting anti-competitive conduct, however, the Commission offers no analysis or facts to support a conclusion that structural separation should be required in this instance.¹⁸ Consequently, U S WEST opposes any new structural separation requirements associated with foreign participation in the U.S. telecommunications market.

VII. CONCLUSION

For the foregoing reasons, U S WEST supports the Commission's *Notice* in principle and agrees that opening the telecommunications markets in the United States will foster the important policies established in the Agreement and Reference Paper. Further, U S WEST urges the Commission to use every method at its disposal to ensure not only open entry to the

¹⁶ See, e.g., 47 U.S.C. § 272.

¹⁷ See *supra* n.13 and accompanying text.

¹⁸ *Notice* at ¶¶ 112-113.

U.S. market but also open entry to foreign markets. Finally, U S WEST opposes the imposition of a structural separation requirement for a U.S. carrier and an affiliated foreign carrier.

Respectfully submitted,

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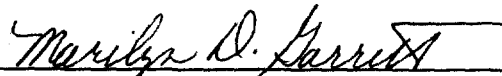
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I, Marilyn D. Garrett, do hereby certify that copies of the foregoing "Comments of U S WEST, Inc." were served this 9th day of July, 1997 by hand to the following:

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A handwritten signature in cursive script, reading "Marilyn D. Garrett", is written over a horizontal line.

Marilyn D. Garrett